

FILED

DEC 04 2018

Clerk, U.S. District Court
District Of Montana
Helena

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

ATLANTIC RICHFIELD)
COMPANY)

Defendants)

ATLANTIC RICHFIELD)
COMPANY,)

Defendant and Counterclaim)
Plaintiff,)

vs.)

UNITED STATES OF AMERICA;)
UNITED STATES DEPARTMENT)
OF JUSTICE, et al.,)

Counterclaim Defendants.)
)
)

CV-89-39-BU-SEH

**ORDER GRANTING SECOND
JOINT MOTION OF THE
UNITED STATES AND
ATLANTIC RICHFIELD FOR
LEAVE TO DISCLOSE
CERTAIN CONFIDENTIAL
SETTLEMENT
COMMUNICATIONS TO
SUPPORT CONSENT DECREE
NEGOTIATIONS**

The Court has considered the United States' and Atlantic Richfield's Second Joint Motion for Leave to Disclose Certain Confidential Settlement Communications to Support Consent Decree Negotiations ("Motion," Dkt. 1168). The confidential communications that are the subject of the Motion are certain settlement-related documents and information developed by the United States, Atlantic Richfield and Third-Party Participants—the State of Montana, Anaconda Deer Lodge County ("ADLC") and Anaconda Local Development Corporation—in settlement negotiations for the Anaconda Smelter National Priorities List Site ("Anaconda Site" or "Site"). The settlement negotiations at issue include negotiation of an Anaconda Site consent decree and two additional, related agreements involving funding for and participation by ADLC at the Site (as described in Paragraph 11 of the Motion).

All settlement documents and other information exchanged and developed in the Anaconda Site settlement negotiations are required to be kept confidential by this Court's Amended Confidentiality Order (Dkt. No. 1052; Dec. 29, 2003). Based upon the assertions and arguments presented in the Motion, the Court understands that the proposed disclosure of some information that is protected by the Court's Order is necessary and appropriate to support negotiations to reach agreement upon terms of a

consent decree (and the two associated ADLC agreements) that would resolve claims for the Anaconda Site, which is one of the sites at issue in this case.

The Court finds that there is good cause to grant the Motion.

Accordingly, leave is hereby granted for the United States, in coordination with Atlantic Richfield, to disclose certain confidential settlement documents and information required to support the three-step process described in the Motion. The permitted disclosures consist of:

- (i) summaries of cleanup plans and amendments to existing cleanup work plans to explain and support proposed remedy modifications, including narrative descriptions of work to be performed and related drawings and figures, as well as supporting technical assessments and related information that the EPA, the Montana DEQ and Atlantic Richfield agree to disclose;
- (ii) the United States and Atlantic Richfield may mutually agree to disclose discrete information related to the ADLC agreements concerning proposed funding for ADLC and ADLC's involvement in and commitments towards remedy implementation at the Site, if the Parties agree in writing and collectively determine that the need to disclose such information in the course of their negotiations is critical to the acceptance of the ADLC agreements by the ADLC Commission and/or the general public; and (iii)

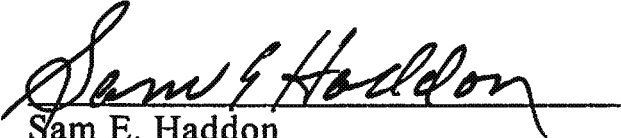
summaries and copies of the proposed final ADLC agreements for public review and ADLC Commission approval after the Parties have completed their respective negotiations.

While sharing the materials with the public that are permitted to be shared under this Order, the United States, Atlantic Richfield and the Third Party-Participants will continue their confidential settlement negotiations under the protections of the Amended Confidentiality Order (Dkt. No. 1052, Dec. 29, 2003) to reach agreement upon all terms needed to finalize the two ADLC agreements and complete an Anaconda Site consent decree for presentation to the public and the Court. All documents prepared for settlement purposes or exchanged heretofore and in the future by the United States, Atlantic Richfield, and the Third-Party Participants in the course of the Anaconda Site settlement negotiations shall remain confidential under the Amended Confidentiality Order (Dkt. No. 1052, Dec. 29, 2003), except as provided herein and in accordance with the Motion.

If the Parties reach an impasse at any point during the course of the three-step process described in the Motion or conclude that a proposed Anaconda Site consent decree will not be lodged with the Court by

December 31, 2019, the United States and Atlantic Richfield will advise the Court of the status of the negotiations by the end of 2019.

DATED this 4th day of December, 2018.


Sam E. Haddon
United States District Court Judge

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